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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action

Written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 January 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Fighting Racial Discrimination through the Fulfillment of Political, Economic, Social, and Cultural Rights

Ever since the dawn of the United-Nations (UN) in 1945, the principle of "equal rights" has become one of the most important rights within the international human rights system, as the system *per se* is inherently based on the notion that all human beings are endowed with the same set of fundamental rights. This notion is beautifully summarized by Article-1 of the Universal-Declaration-of-Human-Rights, which declares that "all human beings are born free and equal in dignity and rights".[1] As a result, the principle of equality and non-discrimination has been enshrined in various international instruments, notably Article-1(2) and 55(c) of the UN-Charter and Article-2 and 26 of the ICCPR.[2] However, even though the rights of equality and non-discrimination are protected under international human rights law, many people around the world are still haunted by the nightmare of racism and racial discrimination. As reported by UN-Committee-on-the-Elimination-of-Racial-Discrimination (CERD) in General-Recommendation-Number-35, "the prevalence of racist hate speech in all regions of the world continues to represent a significant contemporary challenge for human rights".[3] For instance, CERD in General-Recommendation-Number-34 noted that "millions of people of African descent are living in societies in which racial discrimination places them in the lowest positions in social hierarchies".[4] Reports by independent civil societies also indicate that many people are still subjected to discrimination based on their racial or ethnic background, such as the Rohingya people in Myanmar who "have over the years been progressively marginalized from social and political life".[5] This is also the case for the Dalits in India, the Roma people in Europe, the Al-Akhdam in Yemen, or the Mbuti people in Congo, to mention few. These examples demonstrate that despite the obligations imposed by international human rights conventions, racism and racial discrimination persist, and in extreme cases the state is even actively involved in it.

Racism in itself is deplorable and contrary to the fundamental rights of human beings who are born free and equal. The question now is how the present system can be maximized in order to eliminate racism. In this regard, the Special-Rapporteur-on-contemporary-forms-of-racism, racial-discrimination, xenophobia, and-related-intolerance, Mutuma Ruteere, stated in his report that there is a "need for a comprehensive approach to preventing racism, racial discrimination, xenophobia, and related intolerance; possible preventive measures and policies; (…) and further tools to be considered in the prevention of racism and racial discrimination".[6] With respect to preventive measures, he identified, *inter alia*, the measures of "ensuring the participation of discriminated and marginalized groups in public and political life" and "promoting equality of opportunity in social and economic areas and eradicating poverty.[7] Moreover, paragraph-108-of-DDPA also stressed that "those measures for effective action, including social measures, should aim at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society and to bring all onto an equal footing".[8]

This is imperative, since marginalization and exclusion in the political, economic, social, or cultural sectors seem to breed racial discrimination and *vice versa*. As stated by Mr. Ruteere, "the invisibility of poor and excluded ethnic groups in public life contributes to their vulnerability to violations and reinforces prejudices and the structures of discrimination."[9] Moreover, he also observed that there seems to be "a strong correlation between socio-economic

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[1] Universal-Declaration-of-Human-Rights-(adopted-10-December-1948-UNGA-Res217-A(III)-(UDHR)art-1.

[2] Daniel Moeckli, 'Equality and Non-discrimination' in Daniel Moeckli et al. (eds), *International Human Rights Law* (OUP 2010)-193.

[3] UNCERD, 'General-Recommendation-No.35'(26-September-2013)-UN-Doc-CERD/C/GC/35para 46.

[4] UNCERD, 'General-Recommendation-No.34'(30-September-2011)-UN-Doc-CERD/C/GC/34para 2.

[5] International Crisis Group, *Myanmar: The Politics of Rakhine State*, (International Crisis Group-2014) i.

[6] UNHRC 'Report-of-the-SR-on-contemporary-forms-of-racism,racial-discrimination,xenophobia-and-related-intolerance'A/HRC/20/33para5.

[7] Ibid-5-6.

[8] World-Conference-against-Racism,Racial-Discrimination,Xenophobia-and-Related-Intolerance-para108.

[9] Ruteere(n 6)para11.

inequality and racial discrimination and that these reinforce each other".[10] Such link can be perceived in the case of the Roma people. The former-Special-Rapporteur-on-contemporary-forms-of-racism, Githu Muigai, noted that "structural discrimination experienced by Roma finds its origins in the past historical injustices perpetrated against them for centuries, which created structural inequalities that still persist and continue to have a disadvantageous or disproportionate effect on them".[11] On the other hand, in Indonesia, discrimination against people of Chinese-descent is fuelled by the economic discrepancy between the wealthy Chinese-Indonesian and the poor masses of the so-called *pribumi* ('native-Indonesian').[12] These examples once again highlight the importance of the adoption of a comprehensive measure that incorporates preventive measures in various fields. Thus, in their struggle to eliminate racial discrimination, states should not view the right of non-discrimination in isolation, and interrelate it with the fulfillment of political, economic, social, and cultural rights. In relation to this, states should establish more 'inclusive' economic, political, social, and cultural institutions for all members of society, including the most disenfranchised members of the community, without any unlawful distinction.[13]

In fact, the adoption of such a comprehensive and inclusive approach is mandated by the jurisprudence of international human rights law. Firstly, it is worth noting that one of the basic tenets of human rights is that it is indivisible, interdependent, and interrelated, as was mentioned in the Vienna-Declaration-and-Programme-of-Action.[14] This implies that each right must be seen in relation to other rights.[15] Secondly, the definition of 'racial discrimination' in Article-1(1)-of -ICERD is rather broad, as it includes "any distinction, exclusion, restriction, or preference (…) in the political, economic, social, cultural or any other field of public life".[16] As has been confirmed by CERD itself, "the definition of racial discrimination in article-1 expressly extends beyond measures which are explicitly discriminatory".[17] Thirdly, within the framework of ICCPR, Article-2(2) requires states "to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant".[18] As has been demonstrated, since marginalization (either social, political, economic, or cultural) and racism reinforce each other, it can be argued that the fulfillment of the political, economic, social, and cultural rights of a discriminated group constitutes a necessary measure to eliminate racial discrimination. In fact, as noted by Manfred Nowak in his commentary, "measures prescribed by Article-2(2) do not relate solely to repressive remedies against violations that have already taken place but rather include preventive measures and steps to ensure the necessary conditions for unimpeded enjoyment of rights ensured by the Covenant",[19] and this view is supported by the Human-Rights-Committee in its general comments.[20]

Therefore, while states are obliged to promulgate anti-discrimination laws and measures protecting groups from racism, they are bound by ICCPR to take a step further by ensuring the equal fulfillment of political, social, economic, and cultural rights for all members of society. In addition to this, Article-2(2) of ICERD establishes that "state parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms".[21] CERD has also recommended the enactment of multifarious positive measures relating to the fulfillment of political, economic, social, and cultural rights of disenfranchised groups,[22] such as measures to assure equal access to

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[10] Ruteere(n 6).

[11] UNHRC'Report-of-the-Special-Rapporteur-on-contemporary-forms-of-racism,racial-discrimination,xenophobia-and-related-intolerance,Githu Muigai'A/HRC/17/40para24.

[12] See Jemma Purdey, *Anti-Chinese Violence in Indonesia, 1996–1999*(University-of-Hawaii-Press-2006)-22.

[13] See Daron Acemoglu-and-James Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*-(Crown-Business-2012).

[14] Vienna-Declaration-and-Programme-of-Action-A/CONF.157/23para5.

[15] Theo-van-Boven,'Categories of Rights' in Daniel Moeckli-et-al. (eds), *International Human Rights Law* (OUP-2010)-173.

[16] ICERD,(entered-into-force-4-January-1969)-660-UNTS-195-(ICERD)-art-(1).

[17] *L.R. et al. v Slovakia* (2005) UN-Doc-CERD/C/66/D/31/2003, Communication No. 31/3003 para 10.4.

[18] ICCPR(adopted-16-December-1966,entered-into-force-23-March-1976)-999-UNTS-171(ICCPR)art2(2).

[19] Manfred Nowak,UN-Covenant-on-Civil-and-Political-Rights,CCPR-Commentary,at-60(2005).

[20] Ibid-1089-1092.

[21] ICERD-(n-16)-art2(2).

[22] See Wouter Vandenhole,*Non-Discrimination-and-Equality-in-the-View-of-the-UN-Human-Rights-Treaty-Bodies*-(Intersentia 2005) 196-199.

state institutions,[23] economic employment,[24] or educational institutions.[25] It has even ruled that criminalization of racial discrimination is not sufficient to ensure the fulfillment of the right of non-discrimination.[26]

In conclusion, in 1993 the Vienna-Declaration-and-Programme-of-Action declared all human rights to be "indivisible, interdependent, and interrelated" calling on the international community to treat human rights in a fair and equal manner, on the same footing, and with the same emphasis. In the fight against racism and racial discrimination, states should interlink the application of the articles on equality and non-discrimination in conjunction with the implementation of political, economic, social, and cultural rights. Such a comprehensive approach is needed in order to break the unholy cycle between marginalization and racism. In fact, the adoption of this approach is mandated by international human rights law. ICCPR requires states to take the necessary steps to ensure the enjoyment of all rights in the convention, while ICERD explicitly obliges states to include social, economic, cultural, or other measures in the fight against racism when the circumstances so warrant. In order to achieve this, states should establish inclusive policies for disenfranchised groups and transformative institutional models open to all members of society without any unlawful distinction. While the fight to eradicate racism is not without odds, states must take these steps in order to progressively remove the most potent fuels for unfounded and misapprehended racial hatred and prejudices that have become leading causes of systematic racial discrimination and violence.

Ignatius Yordan Nugraha
EAFORD

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[23] UNCERD,'Concluding-observations -of –the-Committee-on-the-Elimination-of-Racial-Discrimination-(Kazakhstan)'UN-Doc-CERD/C/65/CO/3para13.

[24] UNCERD,'Concluding-observations-of-the-Committee-on-the-Elimination-of-Racial-Discrimination-(Norway)'-UN-Doc-CERD/C/304/Add.40para23.

[25] UNCERD,'Concluding-observations-of-the-Committee-on-the-Elimination-of-Racial-Discrimination-(Poland)'-UN-Doc-CERD/C/62/CO/6para13.

[26] *LK-v-the-Netherlands*-(1991)-UN-Doc-CERD/C/42/D/4/1991,Communication-No.4/1991,para6.4.